no more than a tenant's right to fixtures, whether he holds under the mortgagor in possession or the mortgagee. The present case is, however, a good one apparently, and will, as Lindley, L. J., says, tend to reasonable security in dealing with mortgagors in possession, which could hardly exist if one was likely to have one's property confiscated, and be left to an action against a mortgagor who has been sold out, often not the solidest of debtors.

AN UNFORTUNATE CREDITOR. — A case in the last Texas Reports has brought up squarely the question whether two joint debtors, by agreeing with each other to become respectively principal and surety, and by notifying the creditor of their agreement, may compel him to respect its terms, and to treat them thereafter as principal and surety. *Hall* v. *Johnson*, 24 S. W. Rep. 861, was the case of a continuing partner who agreed to indemnify his retiring copartner against payment of the firm debts; notice of this arrangement was given to the creditor. The majority of the court held that an extension of time given to the continuing partner discharged the retiring copartner, Fisher, C. J., dissenting. Each side marshalled its authorities (many of which are collected in 17 Amer. & Eng. Enc. Law, 1131) in full array, and the dissent went into a more extended examination of the principles involved.

The English courts, not content with the theoretical difficulty of the question, have still further complicated the question by disputing the effect of the decision in *Oakeley* v. *Pasheller*, 10 Bligh (N. S.), 548, in the House of Lords in 1836. In *Swire* v. *Redman*, 1 Q. B. D. 536, the court held that notice to the creditor of the new arrangement did not oblige him to treat the debtors as principal and surety, and said that *Oakeley* v. *Pasheller* went on the ground that the creditor had virtually assented to the new arrangement. Lord Justice Lindley, in his work on Partnership (5th edition, p. 252), considered this view of *Oakeley* v. *Pasheller* to be correct; but now in *Rouse* v. *Bradford Banking Co.*, 38 Sol. Law Jour. 270, he says that *Swire* v. *Redman* took the wrong view of *Oakeley* v. *Pasheller*, and that the law is settled the other way. A. L. Smith, L. J., agreed with him, and Kay, L. J., took the contrary view.

These cases have tied the Gordian knot so tight that it needs a decision of the House of Lords to cut it; but in the United States the case may be decided on principle. If we free the question from all analogy as to the rights of mortgagees who have notice of a conveyance by the mortgagor, and of a covenant by the grantee to pay the mortgage debt, it is simply this: Can two joint debtors agree to become principal and surety, and compel the creditor to treat them as such? Surely not. The creditor has a legal right, — how can his debtors force him to relinquish it? Generally the position of his debtors will not be a matter of importance to a creditor, and therefore it will not seem so unjust that equity, in order "to do a great right," should do a "little wrong," by depriving him of his theoretical right. But it may be very material to him. Suppose he thinks that the surest way to secure full payment of the debt is to take the time note of one of the debtors. If they are still joint debtors he may safely do this, and still hold the other; if they are principal and surety he must take the risk of being able to prove that he expressed himself as "reserving all rights against the surety," — a risk which was not part of his original contract, but which is now forced upon him against his will. It

is no answer to say that there are complete precautions against this risk, for there is no reason why he should be compelled to take such precautions.

"The contention is that the two . . . had a right to create a right in themselves, which, if observed, must derogate from the plaintiff's right, and then to say that it is inequitable in the plaintiff to act in derogation of this right so created. Surely the inequity begins earlier, and is in the defendant's derogating from the plaintiff's right without his consent." 1 Q. B. D. 536. This is the view of two of the Lords Justices, for Lindley, L. J., although he does not think *Swire* v. *Redman* to be law, says he should follow if he were free to do so. If the Texas court is correct, the creditor must at his peril remember to state that he reserves all his rights against the retiring partner, and, further, must be able to prove that he did so. Fisher, C. J., seems to hit the truth when he says, 24 S. W. Rep. 866: "An Act of the Legislature, or a judicial decision, that reaches to this extent, would unquestionably be opposed to the spirit of the fundamental law that protects the inviolability of contracts."

An interesting article in support of this view may be found in 14 Canadian Law Times, 57; but it must be admitted that the preponderance of authority is the other way.

"SUPERIOR SERVANTS" AND VICE-PRINCIPALS. — A year ago a summary investigation of the fellow-servant rule would have shown that in about ten States, and in the Supreme Court of the United States, there was recognized, to a greater or less extent, a judicial doctrine, wholly distinct from the rule everywhere prevalent as to a master's duty to have fit appliances, safe premises, and competent servants, to the effect that where there is a superior servant to whom another owes obedience, the master is absolutely responsible to the subordinate for the negligence of the superior, at least within the sphere as to which there is subordination; and the same investigation would have shown that *Chicago, Mil. & St. Paul Ry.* v. *Ross*, 112 U. S. 377, decided Dec. 8, 1884, had done much to help toward wider acceptance of this doctrine, indifferently known as the "superior servant," or the "vice-principal" doctrine. To-day this doctrine stands in a different position, and its future depends, perhaps more than on any other one thing, upon the effect which *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149 U. S. 368, decided last May, shall be deemed to have had on the Ross case. In the Ross case, a railway company was held to be responsible to a locomotive engineer for an injury resulting from the negligence of the conductor of his train. In the Baugh case, the company was held not to be responsible to a fireman for an injury resulting from the negligence of one who was acting as both conductor and engineer of a train consisting of engine and tender only; but two judges dissented, on the ground that to decide for the railway company was to overrule the Ross case. The majority thought that the two cases could be reconciled by considering a complete train as a distinct department of the company's business put in the conductor's charge.

There is, however, a great difference of opinion as to the real effect of this Baugh Case. In *Harley* v. *L. & N. R. R. Co.*, 57 Fed. R. 144 (C. C. Dist. Tenn., June 2, 1893), the doctrine of the Ross case was treated as so modified by the Baugh case that a new trial was granted,